

<i>SERFF Tracking Number:</i>	<i>HNVR-125892895</i>	<i>State:</i>	<i>Arkansas</i>
<i>First Filing Company:</i>	<i>Hanover American Insurance Company, ...</i>	<i>State Tracking Number:</i>	<i>EFT \$50</i>
<i>Company Tracking Number:</i>	<i>PR-CW-08680-01</i>		
<i>TOI:</i>	<i>17.0 Other Liability-Occ/Claims Made</i>	<i>Sub-TOI:</i>	<i>17.0019 Professional Errors &amp; Omissions Liability</i>
<i>Product Name:</i>	<i>Professional Liability; Human Services Form Correction Filing</i>		
<i>Project Name/Number:</i>	<i>Professional Liability; Human Services Form Correction Filing/PR-CW-08680-01</i>		

## Filing at a Glance

Companies: Hanover American Insurance Company, Massachusetts Bay Insurance Company, The Hanover Insurance Company

Product Name: Professional Liability; Human Services Form Correction Filing	SERFF Tr Num: HNVR-125892895	State: Arkansas
TOI: 17.0 Other Liability-Occ/Claims Made	SERFF Status: Closed	State Tr Num: EFT \$50
Sub-TOI: 17.0019 Professional Errors & Omissions Liability	Co Tr Num: PR-CW-08680-01	State Status: Fees verified and received
Filing Type: Form	Co Status:	Reviewer(s): Betty Montesi, Edith Roberts
	Author: Mandi Provencher	Disposition Date: 12/12/2008
	Date Submitted: 11/07/2008	Disposition Status: Approved
Effective Date Requested (New): On Approval		Effective Date (New):
Effective Date Requested (Renewal): On Approval		Effective Date (Renewal):
State Filing Description:		

## General Information

Project Name: Professional Liability; Human Services Form Correction Filing	Status of Filing in Domicile: Pending
Project Number: PR-CW-08680-01	Domicile Status Comments: N/A
Reference Organization: N/A	Reference Number: N/A
Reference Title: N/A	Advisory Org. Circular: N/A
Filing Status Changed: 12/12/2008	
State Status Changed: 11/26/2008	Deemer Date:
Corresponding Filing Tracking Number: N/A	
Filing Description:	
Effective on upon approval, we wish to file two revised forms in our Professional Liability Program. The filing will apply to both monoline and package policies. It has come to our attention that there are some errors in the recently approved Human Services Professional Liability Coverage Form (Occurrence) (421-0542 9/08) and the Human Services Professional Liability Claims-Made Coverage Form (421-0544 9/08). Social Worker and Psychologist were erroneously	

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included in the exclusions listed in Paragraph 8. Specified Professional Services Exclusion (located on page 2). We have amended the forms to correct this error and they are attached with a revised edition date of 10/08.

## Company and Contact

### Filing Contact Information

Mandi Provencher, State Filing Consultant	ma1provench@hanover.com
440 Lincoln Street	(508) 855-2675 [Phone]
Worcester, MA 01653	(508) 855-4786[FAX]

### Filing Company Information

Hanover American Insurance Company	CoCode: 36064	State of Domicile: New Hampshire
440 Lincoln Street	Group Code: 88	Company Type: Property & Casualty
Worcester, MA 01653	Group Name: The Hanover Ins Group	State ID Number:
(508) 855-1000 ext. [Phone]	FEIN Number: 04-3063898	
	-----	
Massachusetts Bay Insurance Company	CoCode: 22306	State of Domicile: New Hampshire
440 Lincoln Street	Group Code: 88	Company Type: Property & Casualty
Worcester, MA 01653	Group Name: The Hanover Ins Group	State ID Number:
(508) 855-1000 ext. [Phone]	FEIN Number: 04-2217600	
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The Hanover Insurance Company	CoCode: 22292	State of Domicile: New Hampshire
440 Lincoln Street	Group Code: 88	Company Type: Property & Casualty
Worcester, MA 01653	Group Name: The Hanover Ins Group	State ID Number:
(508) 855-1000 ext. [Phone]	FEIN Number: 13-5129825	
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## Filing Fees

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*TOI:*      *17.0 Other Liability-Occ/Claims Made*      *Sub-TOI:*      *17.0019 Professional Errors & Omissions Liability*  
  
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Fee Required?      Yes  
 Fee Amount:      \$50.00  
 Retaliatory?      No  
 Fee Explanation:      \$50.00 flat fee  
 Per Company:      No

COMPANY	AMOUNT	DATE PROCESSED	TRANSACTION #
The Hanover Insurance Company	\$50.00	11/07/2008	23790660
Hanover American Insurance Company	\$0.00	11/07/2008	
Massachusetts Bay Insurance Company	\$0.00	11/07/2008	

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## Correspondence Summary

### Dispositions

Status	Created By	Created On	Date Submitted			
Approved	Edith Roberts	12/12/2008	12/12/2008			
Objection Letters and Response Letters						
Objection Letters		Response Letters				
Status	Created By	Created On	Date Submitted	Responded By	Created On	Date Submitted
Pending	Edith Roberts	11/26/2008	11/26/2008	Mandi Provencher	12/03/2008	12/03/2008
Industry						
Response						

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## Disposition

Disposition Date: 12/12/2008

Effective Date (New):

Effective Date (Renewal):

Status: Approved

Comment:

Rate data does NOT apply to filing.

### Overall Rate Information for Multiple Company Filings

<b>Overall Percentage Rate Indicated For This Filing</b>	0.000%
<b>Overall Percentage Rate Impact For This Filing</b>	0.000%
<b>Effect of Rate Filing-Written Premium Change For This Program</b>	\$0
<b>Effect of Rate Filing - Number of Policyholders Affected</b>	0

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Item Type	Item Name	Item Status	Public Access
Supporting Document	Uniform Transmittal Document-Property & Casualty	Approved	Yes
Supporting Document	Arkansas Amendatory Endorsements	Approved	Yes
Form	Human Services Professional Liability Coverage Form	Approved	Yes
Form	Human Services Professional Liability Claims-Made Coverage Form	Approved	Yes

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## Objection Letter

Objection Letter Status Pending Industry Response  
Objection Letter Date 11/26/2008  
Submitted Date 11/26/2008  
Respond By Date  
Dear Mandi Provencher,

This will acknowledge receipt of the captioned filing.

So you already have an Arkansas Amendatory Endorsement in place to use with this program to amend the Extended Reporting Periods? If so please submit a copy.

You may not refuse neither the basic nor the optional Extended Reporting Period for non-payment of premium, premium or deductible owed. Also, you must reinstate the limit of liability in accordance with the terms of AR Code Anno 23-79-306 (6).

Thank you!

Please feel free to contact me if you have questions.

Sincerely,  
Edith Roberts

## Response Letter

Response Letter Status Submitted to State  
Response Letter Date 12/03/2008  
Submitted Date 12/03/2008

Dear Edith Roberts,

### Comments:

### Response 1

Comments: Good Afternoon,

Thank you for your Objection Letter on 11/26/08. I have attached the Arkansas Amendatory Endorsements that were

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previously filed and approved on 9/23, which can be found under Serff Filing #HNVR-125812085.

If there are any further questions, please feel free to contact me.

Thank you,  
Mandi

**Changed Items:**

**Supporting Document Schedule Item Changes**

Satisfied -Name: Arkansas Amendatory Endorsements

Comment:

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Sincerely,  
Mandi Provencher



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## Form Schedule

Review Status	Form Name	Form #	Edition Date	Form Type Action	Action Specific Data	Readability	Attachment
Approved	Human Services Professional Liability Coverage Form	421-0542 10 08	10 08	Policy/Coverage Replaced	Replaced Form #:0.00 421-0542 09 08 Previous Filing #: HNVN-125812085		421-0542 Pro Occurrence form1008edit ion.pdf
Approved	Human Services Professional Liability Claims-Made Coverage Form	421-0544 10 08	10 08	Policy/Coverage Replaced	Replaced Form #:0.00 421-0544 09 08 Previous Filing #: HNVN-125812085		421-0544 Prof CM form1008edit ion.pdf

# HUMAN SERVICES PROFESSIONAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words “you” and “your” refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words “we”, “us” and “our” refer to the Company providing this insurance. The word “insured” means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS**.

## SECTION I – COVERAGES

### A. Insuring Agreement

1. We will pay those sums that the insured becomes legally obligated to pay as “damages” arising out of a “wrongful act” in the course of performing professional services for, or on behalf of your human services organization to which this insurance applies. However, we will have no duty to defend the insured against any “suit” seeking “damages” from a “wrongful act” to which this insurance does not apply. We have the right and duty to defend any “suit” seeking those “damages”. We may at our sole discretion investigate any “wrongful act” and settle any “claim” or “suit” that may result, subject to **SECTION IV CONDITION L**. But:

- a. The amount we will pay for “damages” is limited as described in **SECTION III – LIMITS OF INSURANCE**; and
- b. Our right and duty to defend ends when we have used up our applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided under **SUPPLEMENTARY PAYMENTS** set forth below. Our obligation to pay or reimburse under **SUPPLEMENTARY PAYMENTS** ends when we have used up the applicable limit of insurance under this policy in the payment of judgments or settlements.

2. This insurance applies to “damages” only if:
  - a. The “damages” result from a “wrongful act” that takes place in the “coverage territory”; and
  - b. The “wrongful act” occurs during the policy period; and
  - c. Prior to the policy period, no insured listed under Paragraph 1. of **SECTION II – WHO**

**IS AN INSURED** and no “employee” authorized by you to give or receive notice of a “wrongful act” knew that the “wrongful act” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “wrongful act” occurred, then any continuation, change or resumption of such “wrongful act” during or after the policy period will be deemed to have been known prior to the policy period.

3. A “wrongful act” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** or any “employee” authorized by you to give or receive notice of a “wrongful act” or “claim”, includes any continuation, change or resumption of that “wrongful act” after the end of the policy period.
4. A “wrongful act” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** or any “employee” authorized by you to give or receive notice of a “wrongful act” or “claim”:
  - a. Reports all or any part of the “wrongful act” to us or any other insurer;
  - b. Receives a written or verbal demand or “claim” for “damages” because of the “wrongful act”; or
  - c. Becomes aware by any other means that the “wrongful act” has occurred or has begun to occur.

### B. Exclusions

This insurance does not apply to:

#### 1. Intentional or Criminal Acts

Any “claim” arising out of any intentional, dishonest, fraudulent, criminal, or malicious

act or omission or any willful violation of law by the insured.

**2. Failure to Maintain Insurance**

Any "claim" arising out of the failure to purchase proper insurance or maintain adequate limits of insurance or obtain any bond.

**3. Contractual**

Any "claim" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for "damages" that the insured would have in the absence of the contract or agreement.

**4. Hospital, Pharmacy or Medical Facility Operations**

Any "claim" arising out of the operation of any hospital, sanatorium, "medical clinic", pharmacy, or any other medical facility or laboratory.

**5. Aircraft, Auto and Watercrafts**

Any "claim" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto", or watercraft owned, operated by or rented or loaned to the insured. Use includes operation and "loading and unloading".

This exclusion applies even if the "claim" against any insured alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "wrongful act" which gives rise to any loss, cost, damage or expense involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto", or watercraft that is owned, operated by or rented or loaned to any insured.

**6. Furnishing or Utilizing Pharmaceuticals and Medical Supplies**

Any "claim" arising out of the prescription, utilization, furnishing, or dispensing of drugs or medical, dental, or nursing supplies or appliances, except as directed by a physician, physician assistant, nurse, or any other authorized medical professional, as permitted by state law, and in the normal practice as a human services organization provider.

**7. Psychiatrist**

Any "claim" arising out of the professional services of any psychiatrist.

However, with respect to you only, this exclusion does not apply to professional services of a psychiatrist under a written contract or agreement with you, but only for

such psychiatrist's "wrongful acts" which occur while performing duties related to the conduct of your business. Coverage provided herein shall be excess over any other available insurance whether provided on a primary, excess, contingent or any other basis.

**8. Specified Professional Services**

Any "claim" arising out the rendering or failure to render any of the following professional services, advice or instruction by you or on your behalf or for whom the insured assumed liability by reason of a contract or agreement regardless of whether or not any such service, advice or instruction is ordinary to any insured's profession: Accountant, Anesthesiologist, Attorney, Architect, Engineer, Real Estate Agent, Broker or Manager, Investment Manager or Advisor, Physician, Physician Assistant, Dentist, Dental Assistant, Pharmacist, Pharmacy Technician, Nurse Anesthetist or Nurse Midwife, X-Ray Therapist, Radiologist, Chiropodist, Chiropractor, Optometrist, Veterinarian, Hair or Skin Care Professional, Title Insurer, Stock Broker, or Mortician.

However, with respect to you and your "employees" only, this exclusion does not apply to services performed on your behalf by a physician, physician assistant, dentist, pharmacist, or optometrist who is not your "employee" or volunteer and who has a written contract or agreement with you.

This Coverage is excess over any other valid and collectible insurance (including deductible) available to the insured whether primary, excess, contingent, or on any other basis. When this insurance is excess, we have no duty to investigate or defend any "claim" or "suit" if any other insurer has a duty to defend the insured against that "claim" or "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

Other valid and collectible insurance includes, but is not limited to, policies or insurance programs purchased or established by or on behalf of a named insured to insure against liability arising from activities of the named insured and its employees, whether primary, excess, contingent, or on any other basis. The person seeking coverage shall cooperate with us to determine the existence, availability and coverage of any such other insurance policy, insurance program or defense or indemnification arrangement.

Other valid and collectible insurance does not include any umbrella policy issued by us or any coverage specifically issued by us as excess over this policy. Nothing in this provision shall be construed to require any such umbrella or excess coverage issued by us to apply unless and until all other valid and collectible insurance is exhausted.

#### **9. Membership and Accreditation**

Any "claim" arising out of membership in a formal accreditation or similar professional board or committee or any hospital, professional society or similar organization.

#### **10. Bodily Injury to an Insured**

Any "claim" arising out of "bodily injury" to any insured, or any consequential injury to the spouse, child, parent, brother or sister of that insured.

This exclusion applies:

- a. Whether the insured may be liable as an employer or in any other capacity; and
- b. To any obligation to share "damages" with or repay someone else who must pay "damages" because of the "bodily injury".

#### **11. Workers' Compensation**

Any "claim" arising out of any obligation of the insured under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

#### **12. Employment Practices**

Any "claim" made by or on behalf of:

- a. A person because of any:
  - 1) Refusal to employ that person;
  - 2) Termination of that person's employment; or
  - 3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of any "damages" or injury to that person at whom any of the employment-related practices described in paragraphs 1), 2), or 3) above is directed.

This exclusion applies:

- c. Whether the insured may be liable as an employer or in any other capacity;

- d. To any obligation to share "damages" with or repay someone else who must pay "damages"; and
- e. Whether the injury-causing event described in 1), 2), or 3) above occurred before employment, during employment or after employment of that person.

#### **13. Employers Liability**

Any "claim" made by or on behalf of:

- a. An "employee" or former "employee" of the insured arising out of and in the course of:
  - 1) Employment by the insured; or
  - 2) Performing duties related to conduct of the insured's business; or
- b. A spouse, child, parent, brother, sister, domestic partner or any other relative of that "employee" as a consequence of Paragraph a. above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### **14. Personal and Advertising Injury**

Any "claim" arising out of "personal and advertising injury".

However, this exclusion does not apply to "personal and advertising injury" when the offense is directly resulting from a "wrongful act" and the "personal and advertising injury" does not arise out of:

- a. Oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity;
- b. Oral or written publication, in any manner, of material, whose first publication took place before the beginning of the policy period; or
- c. The willful violation of penal statute or ordinance committed by or with the consent of the insured.

#### **15. Property Damage**

Any "claim" arising out of damage, including all resulting loss of use, to:

- a. Property owned, occupied or used by any insured; or
- b. Property rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by any insured; or

- c. Property which is or was in the possession of any insured or any person acting on behalf of any insured; or
- d. Property that is real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are or were performing operations; or
- e. Electronic data, information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drivers, cells, data processing devices or any other media which are used with electronically controlled equipment.

#### **16. Asbestos**

Any "claim" arising out of any actual or alleged:

- a. Inhaling, ingesting or prolonged physical exposure by any person to asbestos or asbestos fibers or goods or products containing asbestos; or
- b. Use of asbestos in constructing or manufacturing any good, product or structure; or
- c. Intentional or accidental removal including encapsulation, dispersal, sealing or disposal of asbestos or asbestos fibers from any good, product or structure; or
- d. Manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
- e. Products manufactured, sold, handled or distributed by or on behalf of the insured which contain asbestos; or
- f. Acts or omissions of the insured in connection with the general supervision of any job involving the removal, enclosure, encapsulation, dispersal, sealing, or disposal of asbestos, asbestos fibers or products containing asbestos.

General supervision includes the rendering of or failure to render any instructions, recommendations, warnings, or advice.

#### **17. Lead**

Any "claim" arising out of any actual or alleged lead poisoning due to:

- a. Inhaling, ingesting or prolonged physical exposure by any person to any premises, structures or goods or products containing lead; or

- b. Use of lead in constructing or manufacturing any good, product or structure; or
- c. Intentional or accidental removal including encapsulation, dispersal, sealing or disposal of lead from any good, product or structure; or
- d. Manufacturing, transportation, storage or disposal of goods or products containing lead; or
- e. Any product manufactured, sold, handled or distributed by or on behalf of the insured which contain lead; or
- f. Acts or omissions of the insured in connection with the general supervision of any job involving the removal, enclosure, encapsulation, dispersal, sealing, or disposal of products containing lead.

General supervision includes the rendering of or failure to render any instructions, recommendations, warnings, or advice.

#### **18. Pollution**

This insurance does not apply to:

- a. Any "claim" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or
- b. "Pollution cost or expense"

The following definitions are added to **SECTION V -- DEFINITIONS:**

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

"Pollution cost expense" means any loss, cost or expense arising out of any:

- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants"; or
- 2) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

#### **19. Fungi or Bacteria**

- a. Any "claim" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage; or
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are on or are contained in a good or product intended for bodily consumption.

The following definition is added to **SECTION V – DEFINITIONS**:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

## 20. Nuclear Energy Liability

To any "claim" or "damages":

- a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limits of insurance;
- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- c. To any "claim" or "damages" resulting from "hazardous properties" of "nuclear material", if:

- 1) The "nuclear material":
  - a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured";
  - b) Has been discharged or dispersed therefrom; or
  - c) Is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of any "insured"; or
- 2) The "claim" or "damages" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion 2) applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this exclusion:

"Hazardous properties" includes radioactive, toxic, or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility";

"Nuclear facility" means:

- 1) Any "nuclear reactor";
- 2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel", or (c) handling, processing or packaging "waste";

- 3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- 4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; and

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Damages" includes all forms of radioactive contamination of property.

#### **21. Antitrust or Unfair Competition**

Any "claim" arising out of unfair competition or violation of any anti-trust laws.

#### **22. Failure to Collect or Pay**

Any "claim" arising out of the inability or failure of the insured or others to collect or pay money.

#### **23. Illegal Financial Gain**

Any "claim" arising out of or attributable to obtaining or attempting to obtain remuneration or financial gain to which you are not legally entitled.

#### **24. Employment Benefit Plans**

Any "claim" or "suit" arising out of any insureds rendering or failing to render any services in the administering, managing, investing the assets of, or funding any employee benefit plan, including, but not limited to, any employee benefit plan under Employee Retirement Income Security Act of 1974, its amendments or any other similar state or local law.

#### **25. Cross Suits**

Any "claim" made or "suit" brought against an insured by another insured.

#### **26. Abuse or Molestation**

Any "claim" directly or indirectly arising out of or in any way related to:

- a. The actual or threatened abuse or molestation by anyone of any person

regardless of whether the abuse or molestation was specifically intended or resulted from negligent conduct and regardless of whether any insured subjectively intended the injury or damage for which a "claim" is made, or

#### **b. The negligent:**

- 1) Employment;
- 2) Investigation;
- 3) Supervision;
- 4) Reporting to the proper authorities, or failure to so report; or
- 5) Retention

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by **a.** above; or

- c. The negligent failure to provide professional services or neglect of the therapeutic needs of a client, patient or other person because of the conduct which would be excluded by paragraph **a.** above.

#### **27. War**

Loss, however caused, arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including the hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **28. Managed Health Care Services**

Any "claim" arising out of any act or omission in the furnishing or failure to furnish Managed Health Care Services when appointed or contracted as a Managed Care Organization or Gatekeeper.

#### **29. Discrimination**

Any "claim" arising out of any actual or alleged discrimination because of age, race, creed, color, sex, disability, national origin, marital status or sexual preference.

#### **30. Managerial and Administrative Duties**

Any "claim" arising out of acts, errors or omissions of a managerial or administrative nature.

### **SUPPLEMENTARY PAYMENTS**

**A.** We will pay, with respect to any “claim” or “suit” we defend:

1. All expenses we incur including defense costs;
2. The costs of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds;
3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the “claims” or “suit”, including actual loss of earnings up to \$750 a day because of time off from work;
4. All costs taxed against the insured in the “suit”;
5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer; and
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of judgment that is within the applicable limit of insurance.

**B.** We will reimburse you for reasonable legal services charged by a lawyer we agree to and other expense you may incur in the investigation and defense of “disciplinary proceeding(s)” brought against you arising out of a “wrongful act” that is otherwise covered by this policy. This payment is limited to \$100,000 per “wrongful act”.

**C.** We will reimburse you for reasonable legal services charged by a lawyer we agree to and other expenses you may incur arising out of any act or omission in the furnishing of or failure to furnish services as a formal accreditation, standards review or similar board. This payment is limited to \$100,000 per incident.

These payments will not reduce the limits of insurance. However, we will not be obligated to reimburse any insured for any expense, including defense expenses, after the limits of insurance of this policy have been used up in the payment of judgments or settlements.

## **SECTION II – WHO IS AN INSURED**

**A.** You are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your “executive officers” and directors.

**B.** Each of the following is also an insured:

1. Your medical directors, board members and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing of or failure to furnish professional

services by any physician or psychiatrist in the treatment of a patient;

2. Your “employees”, other than your “executive officers”, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your organization;
3. Your volunteers, but only for acts within the scope of their duties related to the conduct of your organization;
4. Students in training, but only for acts within the scope of their duties related to the conduct of your organization;
5. Any social workers and/or case managers, but only for acts within the scope of their duties related to the conduct of your organization; and
6. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization.

However:

- a. Coverage under this provision is afforded only until the 90<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- b. Professional Liability Coverage does not apply to a “wrongful act” that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

## **SECTION III – LIMITS OF INSURANCE**

**A.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

1. Insureds;
2. “Claims” made or “suits” brought; or
3. Persons or organizations making “claims” or bringing “suits”.

**B.** The Aggregate Limit is the most we will pay for all “damages” to which this insurance applies.

**C.** Subject to **B.** above, the Each Wrongful Act Limit is the most we will pay for the sum of all “damages” arising out of any one “wrongful act” to which this insurance applies.

**D.** The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12



months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## **SECTION IV – CONDITIONS**

### **A. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### **B. Your Authority and Duties**

The first Named Insured shown in the Declarations agrees to act on behalf of all insureds with respect to cancellation, notice of any "wrongful act", "claim" or "suit", payment or return of any premium, or consent to a "claim" settlement that we recommend. Each insured, by accepting this insurance, agrees to:

- a. Have the first Named Insured act for them in such matters; and
- b. Promptly notify the first Named Insured, in writing, of any "wrongful act" which may result in a "claim", or any "claim" or "suit" brought against them.

### **C. Duties in the Event of "Wrongful Act," "Claim", or "Suit"**

1. You must see to it that we are notified as soon as practicable of any "wrongful acts" which may result in a "claim". To the extent possible, notice should include:
  - a. How, when, and where the "wrongful act" took place;
  - b. The names and addresses of persons involved in the "wrongful act" and witnesses; and
  - c. The nature of the harm resulting from the "wrongful act".
2. If a "claim" is received by an insured, you must:
  - a. Immediately record the specifics of the "claim" and the date received;
  - b. Notify us as soon as practicable; and
  - c. Forward written notice of the "claim" to us as soon as practicable.
3. You and any other involved insured must:
  - a. Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the "claim" or "suit";

- b. Authorize us to obtain records and other information;
- c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
- d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to an insured because of "loss" to which this insurance may also apply.

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

### **D. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

1. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
2. To sue us under this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for "damages" that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

### **E. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### **1. Primary Insurance**

This insurance is primary except when 2. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in 3. below.

#### **2. Excess Insurance**

- a. This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis available:
  - 1) To your "employee" or volunteer who has other insurance covering his or her professional liability; and

- 2) That you have purchased from a company other than us or a company affiliated with us which is more specific than this insurance.
- b. When this insurance is excess, we will have no duty to defend any "claim" or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- c. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- 1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - 2) The total of all deductible and self-insured amounts under all that other insurance.
- d. We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

Other valid and collectible insurance includes, but is not limited to, policies or insurance programs purchased or established by or on behalf of a named insured to insure against liability arising from activities of the named insured and its employees, whether primary, excess, contingent, or on any other basis. The person seeking coverage shall cooperate with us to determine the existence, availability and coverage of any such other insurance policy, insurance program or defense or indemnification arrangement.

Other valid and collectible insurance does not include any umbrella policy issued by us or any coverage specifically issued by us as excess over this policy. Nothing in this provision shall be construed to require any such umbrella or excess coverage issued by us to apply unless and until all other valid and collectible insurance is exhausted.

### 3. Method of Sharing

- a. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of

insurance or none of the loss remains, whichever comes first.

- b. If the other insurance does not permit contribution by equal shares, we will continue by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### G. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the First Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom "claim" is made or "suit" is brought.

### H. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

### I. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

### J. Governmental Immunity

If you are a public institution, you may be entitled to governmental immunity. This Coverage Part does not constitute a waiver of any charitable or governmental immunity to which you are entitled.

### K. Consent to Settle

If the first Named Insured refuses to consent to the settlement of any "claim" or "suit" which we recommend and which is acceptable to the claimant, then, subject to the provision of **SECTION III – LIMITS OF INSURANCE**, our liability for the "claim" will not exceed the amount for which the "claim" could have been settled, plus the cost of defense incurred by us up to the date of such refusal.

### L. Two or More Coverage Parts, Endorsements or Policies Issued By Us

It is our stated intent that the various coverage parts, endorsements or policies issued to you by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for

the same "claim" or "suit". If this policy and any other coverage part or policy issued to you by us, or any company affiliated with us, apply to the same "wrongful act", occurrence, offense, accident or loss, the maximum Limit of Insurance under all such coverage parts or policies combined shall not exceed the highest applicable Limit of Insurance under any one coverage part or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

#### **M. Representations**

By accepting this policy you agree:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations

#### **N. Premium Audit**

1. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
2. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we have the right to compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **SECTION V – DEFINITIONS**

- A. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.
- B. "Bodily Injury" means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. "Bodily Injury" includes mental anguish or other mental injury resulting from "bodily injury".
- C. "Claim" means:
  1. A written demand for "damages"; or
  2. A "suit" against an insured for a "wrongful act" to which this insurance applies.
- D. "Coverage territory" means:

1. The United States of America (including its territories and possessions), Puerto Rico, and Canada;
2. All parts of the world if:
  - a. The injury or damage arises out of the activities of a person whose home is in the territory described in 1. above, but is away for a short time on your business; and
  - b. The insured's responsibility to pay "damages" is determined in a "suit" on the merits in the territory described in a. above or in a settlement we agree to.

If the Insured normally conducts its business or has a location outside the territory described in 1. above, no coverage applies to any claim or "suit" arising out of any territory not listed in 1. above.

#### **E. "Damages" means a monetary:**

1. Judgment;
2. Award; or
3. Settlement,

but does not include fines, sanctions, penalties, punitive or exemplary damages or the multiple portion of any "damages".

- F. "Disciplinary proceedings" means any proceeding brought against you by a state regulatory or disciplinary official or agency to investigate charges alleging professional misconduct.
- G. "Employee" or "Employees" includes a "leased worker". "Employee" does not include a "temporary worker".
- H. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws, or any other similar governing document.
- I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J. "Loading or unloading" means the handling of property:
  1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  2. While it is in or on an aircraft, watercraft or "auto"; or
  3. While it is being moved from an aircraft, watercraft, or "auto" to the place where it is finally delivered;but "loading or unloading" does not include the movement of property by means of mechanical

device, other than hand truck, that is not attached to the aircraft, watercraft or "auto".

- K. "Medical Clinic" means any medical facility open to the general public. A medical clinic does not include facilities operated for the sole treatment of your consumers, for whom you provide professional services.
- L. "Personal and advertising injury" means injury, other than bodily injury, arising out of one or more of the following offenses:
  - 1. False arrest, detention, or imprisonment;
  - 2. Malicious prosecution;
  - 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - 4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person or organization's goods, products or services;
  - 5. Oral or written publication, in any manner, of material that violates a person's right to privacy;
  - 6. The use of another's advertising idea in your "advertisement"; or
  - 7. Infringing upon another's copyright, trade dress, or slogan in your "advertisement".
- M. "Suit" means a civil proceeding in which "damages" are claimed and to which this insurance applies. "Suit" also includes:
  - 1. An arbitration proceeding in which such "damages" are claimed and to which you must submit or do submit with our consent; or
  - 2. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which you submit with our consent.
- N. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- O. "Wrongful act" means any actual or alleged negligent act, error or omission in the actual rendering or failure to render professional services to others, including counseling services, in your capacity as a human services organization, including the furnishing of food, beverages, medications or appliances in connection therewith. Any or all "wrongful acts" arising from interrelated series of acts, errors or omissions shall be deemed to be one "wrongful act" taking place at the time of the earliest "wrongful act".

# HUMAN SERVICES PROFESSIONAL LIABILITY CLAIMS-MADE COVERAGE FORM

**THIS IS A CLAIMS-MADE COVERAGE FORM – PLEASE READ THE ENTIRE POLICY CAREFULLY.**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words “you” and “your” refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words “we”, “us” and “our” refer to the Company providing this insurance. The word “insured” means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VI – DEFINITIONS**.

## SECTION I – COVERAGES

### A. Insuring Agreement

1. We will pay those sums that the insured becomes legally obligated to pay as “damages” arising out of a “wrongful act” in the course of performing professional services for or on behalf of your human services organization to which this insurance applies. We have the right and duty to defend any “suit” seeking those “damages”. However, we will have no duty to defend the insured against any “suit” seeking “damages” from a “wrongful act” to which this insurance does not apply. We may at our sole discretion investigate any “wrongful act” and settle any “claim” or “suit” that may result, subject to **SECTION IV – CONDITIONS**, paragraph L. But:

- a. The amount we will pay for “damages” is limited as described in **SECTION III – LIMITS OF INSURANCE**; and
- b. Our right and duty to defend ends when we have used up our applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided under **SUPPLEMENTARY PAYMENTS** set forth below. Our obligation to pay or reimburse under **SUPPLEMENTARY PAYMENTS** ends when we have used up the applicable limit of insurance under this policy in the payment of judgments or settlements.

2. This insurance applies to “damages” only if:
  - a. The “damages” result from a “wrongful act” that takes place in the “coverage territory”; and
  - b. The “wrongful act” did not occur before the Retroactive Date, if any, shown in the

Declarations or after the end of the policy period; and

- c. Any claim for “damages” because of the “wrongful act” is first made against any insured, in accordance with paragraph 3. below, during the policy period or any Extended Reporting Period we provide under **SECTION V – EXTENDED REPORTING PERIOD**.

3. A “claim” by a person or organization seeking “damages” will be deemed to have been made at the earlier of the following times:

- a. When notice of such claim is received and recorded by any insured or by us, whichever comes first; or
- b. When we make a settlement in accordance with Paragraph 1. above.

All claims arising out of a “wrongful act” will be considered as having been made at the time the first claim is made.

### B. Exclusions

This insurance does not apply to:

#### 1. Intentional or Criminal Acts

Any “claim” arising out of any intentional, dishonest, fraudulent, criminal, or malicious act or omission or any willful violation of law by the insured.

#### 2. Failure to Maintain Insurance

Any “claim” arising out of the failure to purchase proper insurance or maintain adequate limits of insurance or obtain any bond.

#### 3. Contractual

Any “claim” for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for

damages that the insured would have in the absence of the contract or agreement.

**4. Hospital, Pharmacy or Medical Facility Operations**

Any "claim" arising out of the operation of any hospital, sanatorium, "medical clinic", pharmacy, or any other medical facility or laboratory.

**5. Aircraft, Auto and Watercrafts**

Any "claim" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto", or watercraft owned, operated by or rented or loaned to the insured. Use includes operation and "loading and unloading".

This exclusion applies even if the "claim" against any insured alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "wrongful act" which gives rise to any "loss", cost, damage or expense involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto", or watercraft that is owned, operated by or rented or loaned to any insured.

**6. Furnishing or Utilizing Pharmaceuticals and Medical Supplies**

Any "claim" arising out of the prescription, utilization, furnishing, or dispensing of drugs or medical, dental, or nursing supplies or appliances, except as directed by a physician, physician assistant, nurse, or any other authorized medical professional as permitted by state law, and in the normal practice as a human services organization provider.

**7. Psychiatrist**

Any "claim" arising out of the professional services of any psychiatrist.

However, with respect to you only, this exclusion does not apply to professional services of a psychiatrist under a written contract or agreement with you, but only for such psychiatrist's "wrongful acts" which occur while performing duties related to the conduct of your business. Coverage provided herein shall be excess over any other available insurance whether provided on a primary, excess, contingent or any other basis.

**8. Specified Professional Services**

Any "claim" arising out of the rendering of or failure to render any of the following professional services, advice or instruction by you, on your behalf, or from whom the insured assumed liability by reason of a contract or

agreement, regardless of whether or not any such service, advice or instruction is ordinary to any insured's profession: Accountant, Anesthesiologist, Attorney, Architect, Engineer, Real Estate Agent, Broker or Manager, Investment Manager or Advisor, Physician, Physician Assistant, Dentist, Dental Assistant, Pharmacist, Pharmacy Technician, Nurse Anesthetist or Nurse Midwife, X-Ray Therapist, Radiologist, Chiropodist, Chiropractor, Optometrist, Veterinarian, Hair or Skin Care Professional, Title Insurer, Stock Broker, or Mortician.

However, with respect to you and your "employees" only, this exclusion does not apply to services performed on your behalf by a physician, physician assistant, dentist, pharmacist, or optometrist who is not your "employee" or volunteer and who has a written contract or agreement with you.

This Coverage is excess over any other valid and collectible insurance (including deductible) available to the insured whether primary, excess, contingent, or on any other basis. When this insurance is excess, we have no duty to investigate or defend any "claim" or "suit" if any other insurer has a duty to defend the insured against that "claim" or "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

Other valid and collectible insurance includes, but is not limited to, policies or insurance programs purchased or established by or on behalf of a named insured to insure against liability arising from activities of the named insured and its employees, whether primary, excess, contingent, or on any other basis. The person seeking coverage shall cooperate with us to determine the existence, availability and coverage of any such other insurance policy, insurance program or defense or indemnification arrangement.

Other valid and collectible insurance does not include any umbrella policy issued by us or any coverage specifically issued by us as excess over this policy. Nothing in this provision shall be construed to require any such umbrella or excess coverage issued by us to apply unless and until all other valid and collectible insurance is exhausted.

**9. Membership and Accreditation**

Any "claim" arising out of membership in a formal accreditation or similar professional board or committee, or any hospital, professional society or similar organization.

## 10. Bodily Injury to an Insured

Any "claim" arising out of "bodily injury" to any insured, or any consequential injury to the spouse, child, parent, brother or sister of that insured.

This exclusion applies:

- a. Whether the insured may be liable as an employer or in any other capacity; and
- b. To any obligation to share "damages" with or repay someone else who must pay "damages" because of the "bodily injury".

## 11. Workers' Compensation

Any "claim" arising out of any obligation of the insured under a workers' compensation, disability benefits, or unemployment compensation law, or any similar law.

## 12. Employment Practices

Any "claim" made by or on behalf of:

- a. A person because of any:
  - 1) Refusal to employ that person;
  - 2) Termination of that person's employment; or
  - 3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of any "damages" or injury to that person at whom any of the employment-related practices described in paragraphs 1), 2), or 3) above is directed.

This exclusion applies:

- c. Whether the insured may be liable as an employer or in any other capacity;
- d. To any obligation to share "damages" with or repay someone else who must pay "damages"; and
- e. Whether the injury-causing event described in 1), 2) or 3) above occurred before employment, during employment or after employment of that person.

## 13. Employers Liability

Any "claim" made by or on behalf of:

- a. An "employee" or former "employee" of the insured arising out of and in the course of:
  - 1) Employment by the insured; or

- 2) Performing duties related to conduct of the insured's business; or

- b. A spouse, child, parent, brother, sister, domestic partner or any other relative of that "employee" as a consequence of Paragraph a. above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay "damages" because of the injury.

## 14. Personal and Advertising Injury

Any "claim" arising out of "personal and advertising injury".

However, this exclusion does not apply to "personal and advertising injury" when the offense is directly resulting from a "wrongful act" and the "personal and advertising injury" does not arise out of:

- a. Oral or written publication in any manner of material if done by or at the direction of the insured with knowledge of its falsity;
- b. Oral or written publication in any manner of material whose first publication took place before the beginning of the Retroactive Date, if any, shown in the Declarations; or
- c. The willful violation of a penal statute or ordinance committed by or with the consent of the insured.

## 15. Property Damage

Any "claim" arising out of damage, including all resulting loss of use, to:

- a. Property owned, occupied or used by any insured; or
- b. Property rented to, in the care custody or control of, or over which physical control is being exercised for any purpose by any insured; or
- c. Property which is or was in the possession of any insured or any person acting on behalf of any insured; or
- d. Property that is real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are or were performing operations; or
- e. Electronic data, information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drivers, cells, data processing devices or any other media

which are used with electronically controlled equipment.

#### **16. Asbestos**

Any "claim" arising out of any actual or alleged:

- a. Inhaling, ingesting or prolonged physical exposure by any person to asbestos or asbestos fibers or goods or products containing asbestos;
- b. Use of asbestos in constructing or manufacturing any good, product or structure;
- c. Intentional or accidental removal including encapsulation, dispersal, sealing or disposal of asbestos or asbestos fibers from any good, product or structure;
- d. Manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos;
- e. Products manufactured, sold, handled or distributed by or on behalf of the insured which contain asbestos; or
- f. Acts or omissions of the insured in connection with the general supervision of any job involving the removal, enclosure, encapsulation, dispersal, sealing, or disposal of asbestos, asbestos fibers or products containing asbestos.

General supervision includes the rendering of or failure to render any instructions, recommendations, warnings, or advice.

#### **17. Lead**

Any "claim" arising out of any actual or alleged lead poisoning due to:

- a. Inhaling, ingesting or prolonged physical exposure by any person to any premises, structures, or goods or products containing lead;
- b. Use of lead in constructing or manufacturing any good, product or structure;
- c. Intentional or accidental removal including encapsulation, dispersal, sealing or disposal of lead from any good, product or structure;
- d. Manufacturing, transportation, storage or disposal of goods or products containing lead;
- e. Any product manufactured, sold, handled or distributed by or on behalf of the insured which contain lead; or
- f. Acts or omissions of the insured in connection with the general supervision of

any job involving the removal, enclosure, encapsulation, dispersal, sealing, or disposal of products containing lead.

General supervision includes the rendering of or failure to render any instructions, recommendations, warnings, or advice.

#### **18. Pollution**

This insurance does not apply to:

- a. Any "claim" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or
- b. "Pollution cost or expense."

The following definitions are added to **SECTION VI - DEFINITIONS:**

- a. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
- b. "Pollution cost or expense" means any loss, cost or expense arising out of any:
  - 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants"; or
  - 2) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of, "pollutants".

#### **19. Fungi or Bacteria**

This insurance does not apply to:

- a. Any "claim" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage; or
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing,



treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are on, or are contained in, a good or product intended for bodily consumption.

The following definition is added to **SECTION VI – DEFINITIONS**:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

## **20. Nuclear Energy Liability**

To any "claim" or "damages":

- a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limits of insurance;
- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- c. To any "claim" or "damages" resulting from "hazardous properties" of "nuclear material", if:
  - 1) The "nuclear material":
    - a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured";
    - b) Has been discharged or dispersed therefrom; or
    - c) Is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of any "insured"; or

- 2) The "claim" or "damages" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **2)** applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this exclusion:

"Hazardous properties" includes radioactive, toxic, or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility";

"Nuclear facility" means:

- 1) Any "nuclear reactor";
- 2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel", or (c) handling, processing or packaging "waste";
- 3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- 4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; and

“Nuclear reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

“Damages” includes all forms of radioactive contamination of property.

#### **21. Antitrust or Unfair Competition**

Any “claim” arising out of unfair competition or violation of any anti-trust laws.

#### **22. Failure to Collect or Pay**

Any “claim” arising out of the inability or failure of the insured or others to collect or pay money.

#### **23. Illegal Financial Gain**

Any “claim” arising out of or attributable to obtaining or attempting to obtain remuneration or financial gain to which you are not legally entitled.

#### **24. Employee Benefits Plan**

Any “claim” or “suit” arising out of any insureds rendering or failing to render any services in the administering, managing, investing the assets of, or funding any employee benefit plan, including but not limited to any employee benefit plan under Employee Retirement Income Security Act of 1974, its amendments or any other similar state or local law.

#### **25. Cross Suits**

Any “claim” made or “suit” brought against an insured by another insured.

#### **26. Abuse or Molestation**

Any “claim” directly or indirectly arising out of or in any way related to:

- a. The actual or threatened abuse or molestation by anyone of any person regardless of whether the abuse or molestation was specifically intended or resulted from negligent conduct and regardless of whether any insured subjectively intended the injury or damage for which a claim is made;
- b. The negligent:
  - 1) Employment;
  - 2) Investigation;
  - 3) Supervision;
  - 4) Reporting to the proper authorities, or failure to so report; or
  - 5) Retention

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by **a.** above; or

- c. The negligent failure to provide professional services or neglect of the therapeutic needs of a client, patient or other person because of the conduct which would be excluded by paragraph **a.** above.

#### **27. War**

“Loss”, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including the hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **28. Managed Health Care Services**

Any “claim” arising out of any act or omission in the furnishing of or failure to furnish Managed Health Care Services when appointed or contracted as a Managed Care Organization or Gatekeeper.

#### **29. Discrimination**

Any “claim” arising out of any actual or alleged discrimination because of age, race, creed, color, sex, disability, national origin, marital status or sexual preference.

#### **30. Management and Administrative Duties**

Any “claim” arising out of acts, errors or omissions of any managerial or administrative nature.

### **SUPPLEMENTARY PAYMENTS**

- A. We will pay, with respect to any “claim” or “suit” we defend:
  1. All expenses we incur, including defense costs;
  2. The costs of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds;
  3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claims or “suit”,

including actual loss of earnings up to \$750 a day because of time off from work;

4. All costs taxed against the insured in the "suit";
  5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer; and
  6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- B.** We will reimburse you for reasonable legal fees charged by a lawyer, approved by us, and other expenses that you may incur in the investigation and defense of "disciplinary proceeding(s)" brought against you arising out of a "wrongful act" that is otherwise covered by this policy. This payment is limited to \$100,000 per "wrongful act".
- C.** We will reimburse you for reasonable legal fees charged by a lawyer, approved by us, and other expenses that you may incur arising out of any act or omission in the furnishing of or failure to furnish services as a formal accreditation, standards review or similar board. This payment is limited to \$100,000 per incident.

These payments will not reduce the limits of insurance. However, we will not be obligated to reimburse any insured for any expense, including defense expenses, after the limits of insurance of this policy have been used up in the payment of judgments or settlements.

## **SECTION II – WHO IS AN INSURED**

- A.** You are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your executive officers and directors.
- B.** Each of the following is also an insured:
1. Your medical directors, board members and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing of or failure to furnish professional services by any physician or psychiatrist in the treatment of a patient;
  2. Your "employees", other than your "executive officers", but only for acts within the scope of their employment by you or while performing duties related to the conduct of your organization;
  3. Your volunteers, but only for acts within the scope of their duties related to the conduct of your organization;

4. Students in training, but only for acts within the scope of their duties related to the conduct of your organization;
5. Any social workers and/or case managers, but only for acts within the scope of their duties related to the conduct of your organization; and
6. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization.

However:

- a. Coverage under this provision is afforded only until the 90<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- b. Professional Liability Coverage does not apply to a "wrongful act" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

## **SECTION III – LIMITS OF INSURANCE**

- A.** The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. Insureds;
  2. "Claims" made or "suits" brought; or
  3. Persons or organizations making "claims" or bringing "suits".
- B.** The Aggregate Limit is the most we will pay for all "damages" to which this insurance applies.
- C.** Subject to **B.** above, the Each Wrongful Act Limit is the most we will pay for the sum of all "damages" arising out of any one "wrongful act" to which this insurance applies.
- D.** The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## **SECTION IV – CONDITIONS**

### **A. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

## **B. Your Authority and Duties**

The first Named Insured shown in the Declarations agrees to act on behalf of all insureds with respect to cancellation, notice of any "wrongful act", "claim" or "suit", payment or return of any premium, or consent to a claim settlement that we recommend. Each insured, by accepting this insurance, agrees to:

1. Have the first Named Insured act for them in such matters; and
2. Promptly notify the first Named Insured, in writing, of any "wrongful act" which may result in a "claim", or any "claim" or "suit" brought against them.

## **C. Duties in the Event of "Wrongful Act," "Claim", or "Suit"**

1. You must see to it that we are notified as soon as practicable of any "wrongful acts" which may result in a "claim". To the extent possible, notice should include:
  - a. How, when, and where the "wrongful act" took place;
  - b. The names and addresses of persons involved in the "wrongful act" and witnesses; and
  - c. The nature of the harm resulting from the "wrongful act".
2. If a "claim" is received by an insured, you must:
  - a. Immediately record the specifics of the "claim" and the date received;
  - b. Notify us as soon as practicable; and
  - c. Forward written notice of the "claim" to us as soon as practicable.
3. You and any other involved insured must:
  - a. Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the "claim" or "suit";
  - b. Authorize us to obtain records and other information;
  - c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to an insured because of "loss" to which this insurance may also apply.

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

## **D. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

1. To join us as a party or otherwise bring us into a "suit" asking for "damages" from an insured; or
2. To sue us under this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for "damages" that are not payable under the terms of this Coverage Part or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

## **E. Other Insurance**

If other valid and collectible insurance is available to the insured for a "loss" we cover under this Coverage Part, our obligations are limited as follows:

### **1. Primary Insurance**

This insurance is primary except when **2.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **3.** below.

### **2. Excess Insurance**

This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis available:

- a. To your "employee" or volunteer who has other insurance covering his or her professional liability; or
- b. That you have purchased insurance from a company other than us or a company affiliated with us which is more specific than this insurance.

When this insurance is excess, we will have no duty to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- c. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- d. The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

Other valid and collectible insurance includes, but is not limited to, policies or insurance programs purchased or established by or on behalf of a named insured to insure against liability arising from activities of the named insured and its employees, whether primary, excess, contingent, or on any other basis. The person seeking coverage shall cooperate with us to determine the existence, availability and coverage of any such other insurance policy, insurance program or defense or indemnification arrangement.

Other valid and collectible insurance does not include any umbrella policy issued by us or any coverage specifically issued by us as excess over this policy. Nothing in this provision shall be construed to require any such umbrella or excess coverage issued by us to apply unless and until all other valid and collectible insurance is exhausted.

### **3. Method of Sharing**

- a. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
- b. If the other insurance does not permit contribution by equal shares, we will continue by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### **F. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the First Named Insured, this insurance applies:

- 1. As if each Named Insured were the only Named Insured; and
- 2. Separately to each insured against whom "claim" is made or "suit" is brought.

### **G. Transfer of Rights of Recovery Against Others to Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

### **H. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### **I. Your Right to "Claim" and "Wrongful act" Information**

- 1. We will provide the first Named Insured shown in the Declarations the following information relating to this and any preceding Professional Liability Claims Made Coverage Part we have issued to you during the previous three years:
  - a. A list or other record of each "wrongful act" not previously reported to any other insurer, of which we were notified in accordance with paragraph **B.** of this Section. We will include the date and brief description of the "wrongful act" if that information was in the notice we received.
  - b. A summary by policy year, of payments made and amounts reserved, stated separately under the applicable Aggregate for Each Annual Policy Year limit.
- 2. Amounts reserved are based on our judgment. They are subject to change and should not be regarded as ultimate settlement values.
- 3. You must not disclose this information to any claimant or claimant's representative without our consent.
- 4. If we cancel or elect not to renew this Coverage Part, we will provide such information no later than 30 days before the date of policy termination. If other circumstances apply, we will provide this information only if we receive a written request from the first Named Insured. In this case, we will provide this information within 45 days of receipt of the request.

5. We compile "claim" and "wrongful act" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the first Named Insured, we make no representation or warranties to insureds, insurers, or others to whom this information is furnished by or on behalf of any insured. Cancellation or nonrenewal will be effective even if we inadvertently provide inaccurate or incomplete information.

#### **J. Governmental Immunity**

If you are a public institution, you may be entitled to governmental immunity. This Coverage Part does not constitute a waiver of any charitable or governmental immunity to which you are entitled.

#### **K. Consent to Settle**

If the first Named Insured refuses to consent to the settlement of any "claim" or "suit" which we recommend and which is acceptable to the claimant, then, subject to the provision of **SECTION III – LIMITS OF INSURANCE**, our liability for the claim will not exceed the amount for which the claim could have been settled, plus the cost of defense incurred by us up to the date of such refusal.

#### **L. Two or More Coverage Parts, Endorsements or Policies Issued by Us**

It is our stated intent that the various coverage parts, endorsements or policies issued to you by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same "claim" or "suit". If this policy and any other coverage part or policy issued to you by us, or any company affiliated with us, apply to the same "wrongful act", occurrence, offense, accident or loss, the maximum Limit of Insurance under all such coverage parts or policies combined shall not exceed the highest applicable Limit of Insurance under any one coverage part or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

#### **M. Representations**

By accepting this policy you agree that:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

#### **N. Premium Audit**

1. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
2. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we have the right to compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

### **SECTION V – EXTENDED REPORTING PERIOD**

#### **A. We will provide one or more Extended Reporting Periods, as described below, if:**

1. This Coverage Part is canceled or not renewed; or
2. We renew or replace this Coverage Part with insurance that:
  - a. Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
  - b. Does not apply to "loss" resulting from "wrongful acts" on a claims-made basis.

#### **B. Extended Reporting Periods do not extend the "policy period" or change the scope of the coverage provided. They apply only to "claims" for "wrongful acts" that occur before the end of the "policy period" but not before the Retroactive Date, if any, shown in the Declarations.**

Once in effect, Extended Reporting Periods may not be canceled.

#### **C. If we cancel or do not renew for any reason other than nonpayment of premium, an Automatic Extended Reporting Period will be provided without an additional premium. This period starts with the end of the policy period and lasts for one year with respect to "claims" arising out of any "wrongful act" occurring prior to the end of the policy period and not previously reported to us.**

1. This Automatic Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance your purchase, or that would be covered but for exhaustion of the amount of insurance applicable to "claims".
2. The Automatic Extended Reporting Period does not reinstate or increase the Limits of Insurance.

D. If you cancel or non-renew, or if we cancel or non-renew for nonpayment of premium, you shall have the right, upon payment of an additional premium of 35% of the annual premium, to a one year Optional Extended Reporting Period. This period starts with the end of the policy period and lasts for one year with respect to "claims" arising out of any "wrongful act" occurring prior to the end of the policy period and not previously reported to us.

1. This Optional Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance your purchase, or that would be covered but for exhaustion of the amount of insurance applicable to "claims".
2. The Optional Extended Reporting Period does not reinstate or increase the Limits of Insurance.
3. You must give us a written request for the Optional Extended Reporting Period endorsement within 60 days following the date of cancellation or non-renewal. The Optional Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due. If the cancellation or non-renewal is for nonpayment of premium, this Optional Extended Reporting Period will not be provided unless any earned premium due is paid within 60 days after the effective date of such cancellation or expiration.

E. In the event similar insurance is in force covering claims first made during Extended Reporting Period, coverage provided by this Policy shall be excess over any part of any other valid and collectable insurance available to the insured, whether primary, excess, contingent or on any other basis, whose policy period begins or continues after our policy period ends.

## SECTION VI – DEFINITIONS

- A. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.
- B. "Bodily Injury" means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".
- C. "Coverage territory" means:
1. The United States of America (including its territories and possessions), Puerto Rico, and Canada;
  2. All parts of the world if:
    - a. The injury or damage arises out of the activities of a person whose home is in the territory described in 1. above, but is away for a short time on your business; and

- b. The insured's responsibility to pay "damages" is determined in a "suit" on the merits in the territory described in a. above or in a settlement we agree to.

If the Insured normally conducts its business or has a location outside the territory described in 1. above, no coverage applies to any claim or "suit" arising out of any territory not listed in 1. above.

D. "Claim" means:

1. A written demand for "damages"; or
2. A "suit" against an insured for a "wrongful act" to which this insurance applies.

E. "Damages" means a monetary:

1. Judgment;
2. Award; or
3. Settlement,

but does not include fines, sanctions, penalties, punitive or exemplary damages or the multiple portion of any "damages".

F. "Disciplinary proceedings" means any proceeding brought against you by a state regulatory or disciplinary official or agency to investigate charges alleging professional misconduct.

G. "Employee" or "Employees" includes a "leased worker". "Employee" does not include a "temporary worker".

H. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws, or any other similar governing document.

I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

J. "Loading or unloading" means the handling of property:

1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
2. While it is in or on an aircraft, watercraft or "auto"; or
3. While it is being moved from an aircraft, watercraft, or "auto" to the place where it is finally delivered.

But "loading or unloading" does not include the movement of property by means of mechanical device, other than hand truck, that is not attached to the aircraft, watercraft or "auto".

K. "Medical Clinic" means any medical facility open to the general public. A medical clinic does not include facilities operated for the sole treatment of

your consumers, for whom you provide professional services.

- L.** "Personal and advertising injury" means injury, other than bodily injury, arising out of one or more of the following offenses:
1. False arrest, detention, or imprisonment;
  2. Malicious prosecution;
  3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  5. Oral or written publication, in any manner, of material that violates a person's right to privacy;
  6. The use of another's advertising idea in your "advertisement"; or
  7. Infringing upon another's copyright, trade dress, or slogan in your "advertisement".
- M.** "Suit" means a civil proceeding in which "damages" are claimed and to which this insurance applies. "Suit" also includes:
1. An arbitration proceeding in which such "damages" are claimed and to which you must submit or do submit with our consent; or
  2. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which you submit with our consent.
- N.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- O.** "Wrongful act" means any actual or alleged negligent act, error or omission in the actual rendering of or failure to render professional services to others, including counseling services, in your capacity as a human services organization, including the furnishing of food, beverages, medications or appliances in connection therewith.
- Any or all "wrongful acts" arising from interrelated series of acts, errors or omissions shall be deemed to be one "wrongful act" taking place at the time of the earliest "wrongful act".



<i>SERFF Tracking Number:</i>	<i>HNVR-125892895</i>	<i>State:</i>	<i>Arkansas</i>
<i>First Filing Company:</i>	<i>Hanover American Insurance Company, ...</i>	<i>State Tracking Number:</i>	<i>EFT \$50</i>
<i>Company Tracking Number:</i>	<i>PR-CW-08680-01</i>		
<i>TOI:</i>	<i>17.0 Other Liability-Occ/Claims Made</i>	<i>Sub-TOI:</i>	<i>17.0019 Professional Errors &amp; Omissions Liability</i>
<i>Product Name:</i>	<i>Professional Liability; Human Services Form Correction Filing</i>		
<i>Project Name/Number:</i>	<i>Professional Liability; Human Services Form Correction Filing/PR-CW-08680-01</i>		

## Rate Information

Rate data does NOT apply to filing.

SERFF Tracking Number: HNVN-125892895 State: Arkansas  
First Filing Company: Hanover American Insurance Company, ... State Tracking Number: EFT \$50  
Company Tracking Number: PR-CW-08680-01  
TOI: 17.0 Other Liability-Occ/Claims Made Sub-TOI: 17.0019 Professional Errors & Omissions Liability  
Product Name: Professional Liability; Human Services Form Correction Filing  
Project Name/Number: Professional Liability; Human Services Form Correction Filing/PR-CW-08680-01

## Supporting Document Schedules

**Satisfied -Name:** Uniform Transmittal Document-Property & Casualty **Review Status:** Approved 12/12/2008

**Comments:**

**Attachment:**

AR P&C Trans Document - Forms.pdf

**Satisfied -Name:** Arkansas Amendatory Endorsements **Review Status:** Approved 12/12/2008

**Comments:**

**Attachments:**

421-0621 ARKANSAS AMENDATORY--CM.pdf

421-0622 ARKANSAS AMENDATORY--OCC.pdf


**Property & Casualty Transmittal Document**

<b>1. Reserved for Insurance Dept. Use Only</b>	<b>2. Insurance Department Use only</b>	
	a. Date the filing is received:	
	b. Analyst:	
	c. Disposition:	
	d. Date of disposition of the filing:	
	e. Effective date of filing:	
	New Business	
	Renewal Business	
	f. State Filing #:	
	g. SERFF Filing #:	
h. Subject Codes		

<b>3. Group Name</b>	The Hanover Insurance Group				<b>Group NAIC #</b>	0088
<b>4. Company Name(s)</b>	<b>Domicile</b>	<b>NAIC #</b>	<b>FEIN #</b>	<b>State #</b>		
The Hanover Insurance Company	NH	22292	13-5129825			
Massachusetts Bay Insurance Company	NH	22306	04-2217600			
Hanover American Insurance Company	NH	36064	04-3063898			

<b>5. Company Tracking Number</b>	PR-CW-08680-01
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**Contact Info of Filer(s) or Corporate Officer(s)** [include toll-free number]

<b>6. Name and address</b>	<b>Title</b>	<b>Telephone #s</b>	<b>FAX #</b>	<b>e-mail</b>
Mandi Provencher 440 Lincoln Street Worcester MA 01653	State Filings Consultant	508-855-2675	508-855-4786	ma1provench@hanover.com
<b>7. Signature of authorized filer</b>				
<b>8. Please print name of authorized filer</b>	Mandi Provencher			

**Filing Information** (see General Instructions for descriptions of these fields)

<b>9. Type of Insurance (TOI)</b>	17.000; Other Liability			
<b>10. Sub-Type of Insurance (Sub-TOI)</b>	17.0019; Professional Errors and Omissions Liability			
<b>11. State Specific Product code(s) (if applicable) [See State Specific Requirements]</b>	N/A			
<b>12. Company Program Title (Marketing Title)</b>	N/A			
<b>13. Filing Type</b>	<input type="checkbox"/> Rate/Loss Cost <input type="checkbox"/> Rules <input type="checkbox"/> Rates/Rules <input checked="" type="checkbox"/> Forms <input type="checkbox"/> Combination Rates/Rules/Forms <input type="checkbox"/> Withdrawal <input type="checkbox"/> Other (give description)			
<b>14. Effective Date(s) Requested</b>	New:	Upon Approval	Renewal:	Upon Approval
<b>15. Reference Filing?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>16. Reference Organization (if applicable)</b>	N/A			
<b>17. Reference Organization # &amp; Title</b>	N/A			
<b>18. Company's Date of Filing</b>	11/07/2008			
<b>19. Status of filing in domicile</b>	Not Filed <input checked="" type="checkbox"/> Pending <input type="checkbox"/> Authorized <input type="checkbox"/> Disapproved			

## Property & Casualty Transmittal Document

<b>20.</b>	<b>This filing transmittal is part of Company Tracking #</b>	PR-CW-08680-01
<b>21.</b>	<b>Filing Description</b> [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]	

Effective on upon approval, we wish to file two revised forms in our Professional Liability Program. The filing will apply to both monoline and package policies. It has come to our attention that there are some errors in the recently approved Human Services Professional Liability Coverage Form (Occurrence) (421-0542 9/08) and the Human Services Professional Liability Claims-Made Coverage Form (421-0544 9/08). Social Worker and Psychologist were erroneously included in the exclusions listed in Paragraph 8. Specified Professional Services Exclusion (located on page 2). We have amended the forms to correct this error and they are attached with a revised edition date of 10/08.

<b>22.</b>	<b>Filing Fees</b> (Filer must provide check # and fee amount if applicable.) [If a state requires you to show how you calculated your filing fees, place that calculation below]
<div style="margin-bottom: 20px;"> <b>Check #:</b>      <b>N/A - EFT</b>  <b>Amount:</b>     \$50         </div> <div style="text-align: center; margin-top: 100px;"> <b>Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.</b> </div>	

\*\*\*Refer to each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)

**FORM FILING SCHEDULE**

(This form must be provided ONLY when making a filing that includes forms)  
 (Do not refer to the body of the filing for the forms listing, unless allowed by state.)

1.	<b>This filing transmittal is part of Company Tracking #</b>	PR-CW-08680-01
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2.	<b>This filing corresponds to rate/rule filing number</b> (Company tracking number of rate/rule filing, if applicable)	N/A
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3.	<b>Form Name /Description/Synopsis</b>	<b>Form # Include edition date</b>	<b>Replacement Or Withdrawn?</b>	<b>If replacement, give form # it replaces</b>	<b>Previous state filing number, if required by state</b>
01	HUMAN SERVICES PROFESSIONAL LIABILITY COVERAGE FORM	421-0542 10 08	<input type="checkbox"/> New <input checked="" type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	421-0542 09 08	HNVR-125812085
02	HUMAN SERVICES PROFESSIONAL LIABILITY CLAIMS- MADE COVERAGE FORM	421-0544 10 08	<input type="checkbox"/> New <input checked="" type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	421-0544 09 08	HNVR-125812085
03			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
04			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
05			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
06			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
07			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
08			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
09			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
10			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
11			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		

# ARKANSAS AMENDATORY ENDORSEMENT (CLAIMS MADE)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

HUMAN SERVICES PROFESSIONAL LIABILITY CLAIMS-MADE COVERAGE FORM

## The following is added to SECTION IV – CONDITIONS:

### O. Cancellation

- a. If this policy is cancelled, we will send the first Named Insured any premium refund due.
- b. We will refund the pro rata unearned premium if the policy is:
  - 1) Cancelled by us or at our request;
  - 2) Cancelled but rewritten with us or in our company group;
  - 3) Cancelled because you no longer have an insurable interest in the property or business operation that is the subject of this insurance; or
  - 4) Cancelled after the first year of a prepaid policy that was written for a term of more than one year.
- c. If the policy is cancelled at the request of the first Named Insured, other than a cancellation described in **b.2), 3) or 4)** above, we will refund 90% of the pro rata unearned premium. However, the refund will be less than 90% of the pro rata unearned premium if the refund of such amount would reduce the premium retained by us to an amount less than the minimum premium for this policy.
- d. The cancellation will be effective even if we have not made or offered a refund.
- e. If the first Named Insured cancels the policy, we will retain no less than \$100 of the premium
- f. **Cancellation of Policies In Effect More Than 60 Days**
  - 1) If this policy has been in effect more than 60 days or is a renewal policy, we may cancel only for one or more of the following reasons:
    - a) Nonpayment of premium;
    - b) Fraud or material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy or in presenting a claim under the policy;

c) The occurrence of a material change in the risk which substantially increases any hazard insured against after policy issuance;

d) Violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or its occupancy which substantially increases any hazard insured against under the policy;

e) Nonpayment of membership dues in those cases where our by-laws, agreements or other legal instruments require payment as a condition of the issuance and maintenance of the policy; or

f) A material violation of a material provision of the policy.

### 2) If we cancel for:

a) Nonpayment of premium, we will mail or deliver written notice of cancellation, stating the reason for cancellation, to the first Named Insured and any lienholder or loss payee named in the policy at least 10 days before the effective date of cancellation.

b) Any other reason, we will mail or deliver notice of cancellation to the first Named Insured and any lienholder or loss payee named in the policy at least 20 days before the effective date of cancellation.

**SECTION IV – CONDITIONS, item H. is replaced by the following:**

### I. NONRENEWAL

1. If we decide not to renew this policy, we will mail to the first Named Insured shown in the Declarations, and to any lienholder or loss payee named in the policy, written notice of nonrenewal at least 60 days before:

a. Its expiration date; or

b. Its anniversary date, if it is a policy written for a term of more than one year and with no fixed expiration date.

However, we are not required to send this notice if nonrenewal is due to the first Named Insured's failure to pay any premium required for renewal.

The provisions of this Paragraph 1. do not apply to any mortgageholder.

2. We will mail our notice to the first Named Insured's mailing address last known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

**The following is added to SECTION IV – CONDITIONS, item H. Transfer of Rights Of Recovery Against Others To Us:**

We will be entitled to recovery only after the insured ("insured") has been fully compensated for the loss or damage sustained, including expenses incurred in obtaining full compensation for the loss or damage.

**The following changes are made to SECTION IV – CONDITIONS, item I.:**

- a. The following is added to paragraph 1.a.:

We will also include any estimated reserves on reported "wrongful acts".

- b. Paragraph 1.c. is added as follows:

A description of closed claims and/or open "claims" including the date and description of "wrongful act", amount of payment, if any, and an estimate of reserves, if any.

- c. Paragraph 4. is replaced by the following:

If we cancel or elect not to renew this Coverage Part, we will provide loss information within 15 days after notice of cancellation or nonrenewal is issued. In other circumstances, we will provide this information only if we receive a written request from the first Named Insured during the policy period or within 60 days after the end of the policy period. In this case, we will provide this information within 30 days of receipt of the request.

**Paragraphs C.1 and C.2. of SECTION V – EXTENDED REPORTING PERIODS are replaced by the following:**

This Automatic Extended Reporting Period does not apply to claims for "bodily injury" or "property damage" or for "corrective action costs" that:

1. a. Are covered under any subsequent insurance you purchase; or  
b. Would be covered but for the exhaustion of the applicable amount of either the limits of that subsequent insurance or the subsequent defense expense amount.
2. The Automatic Extended Reporting Period does not reinstate or increase the Limits of Insurance or

the Defense Expense Amount or extend the policy period.

**Paragraph D. of SECTION V – EXTENDED REPORTING PERIODS is replaced by the following:**

- D. An Optional Extended Reporting Period of unlimited duration will be offered, but only by an endorsement and for an extra charge. This supplemental period starts when the Basic Extended Reporting Period, set forth in paragraph C. of SECTION V – EXTENDED REPORTING PERIODS, ends.

The Optional Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage Part for future payment of damages; and
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

This endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Optional Extended Reporting Period, including a provision to the effect that the insurance afforded for claims first received during such period is excess over any other valid and collectible insurance available under policies in force after the Optional Extended Reporting Period starts.

**Paragraph E. of SECTION V – EXTENDED REPORTING PERIODS is replaced by the following and Paragraph F. is added as shown:**

- E. 1. A Supplemental Extended Reporting Period of two years is available as an option, but only by an endorsement and for an additional charge. The supplemental period starts with the end of the Basic Extended Reporting Period.
2. You must give us a written request for the Supplemental Extended Reporting Period Endorsement within sixty (60) days after the end of the policy period.
- F. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

# ARKANSAS AMENDATORY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

## HUMAN SERVICES PROFESSIONAL LIABILITY COVERAGE FORM

The following is added to **SECTION IV – CONDITIONS**:

### **O. Cancellation**

- a. If this policy is cancelled, we will send the first Named Insured any premium refund due.
- b. We will refund the pro rata unearned premium if the policy is:
  - 1) Cancelled by us or at our request;
  - 2) Cancelled but rewritten with us or in our company group;
  - 3) Cancelled because you no longer have an insurable interest in the property or business operation that is the subject of this insurance; or
  - 4) Cancelled after the first year of a prepaid policy that was written for a term of more than one year.
- c. If the policy is cancelled at the request of the first Named Insured, other than a cancellation described in **b.2), 3) or 4)** above, we will refund 90% of the pro rata unearned premium. However, the refund will be less than 90% of the pro rata unearned premium if the refund of such amount would reduce the premium retained by us to an amount less than the minimum premium for this policy.
- d. The cancellation will be effective even if we have not made or offered a refund.
- e. If the first Named Insured cancels the policy, we will retain no less than \$100 of the premium
- f. **Cancellation of Policies In Effect More Than 60 Days**
  - 1) If this policy has been in effect more than 60 days or is a renewal policy, we may cancel only for one or more of the following reasons:
    - a) Nonpayment of premium;
    - b) Fraud or material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy or in presenting a claim under the policy;

c) The occurrence of a material change in the risk which substantially increases any hazard insured against after policy issuance;

d) Violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or its occupancy which substantially increases any hazard insured against under the policy;

e) Nonpayment of membership dues in those cases where our by-laws, agreements or other legal instruments require payment as a condition of the issuance and maintenance of the policy; or

f) A material violation of a material provision of the policy.

### **2) If we cancel for:**

a) Nonpayment of premium, we will mail or deliver written notice of cancellation, stating the reason for cancellation, to the first Named Insured and any lienholder or loss payee named in the policy at least 10 days before the effective date of cancellation.

b) Any other reason, we will mail or deliver notice of cancellation to the first Named Insured and any lienholder or loss payee named in the policy at least 20 days before the effective date of cancellation.

**SECTION IV – CONDITIONS**, item **I.** is replaced by the following:

### **I. NONRENEWAL**

1. If we decide not to renew this policy, we will mail to the first Named Insured shown in the Declarations, and to any lienholder or loss payee named in the policy, written notice of nonrenewal at least 60 days before:

a. Its expiration date; or

b. Its anniversary date, if it is a policy written for a term of more than one year and with no fixed expiration date.



However, we are not required to send this notice if nonrenewal is due to the first Named Insured's failure to pay any premium required for renewal.

The provisions of this Paragraph 1. do not apply to any mortgageholder.

2. We will mail our notice to the first Named Insured's mailing address last known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

The following is added to **SECTION IV – CONDITIONS**, item **H. Transfer of Rights Of Recovery Against Others To Us**:

We will be entitled to recovery only after the insured ("insured") has been fully compensated for the loss or damage sustained, including expenses incurred in obtaining full compensation for the loss or damage.